IN THE HIGH COURT OF BOMBAY AT GOA
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FIRST APPEAL NO. 164 OF 2003 AND
CIVIL APPLICATION NO.155 OF 2003

1. Shri Laximan Surya
Gawade, Government
jeep Driver, r/o
Mayem, Bicholim, Goa,

2. The Director of Health,
having his office at
Campal, Panaji, Goa, and

3. The Chief Secretary,
State of Goa, with office
at Secretariat, Panaji,
Goa. ...Appellants.

Versus

1. Smt. Exoda Tucarama Salcar,
58 years old, mother of
late Shri Vijay Tucarama
Salcar and her daughters,

2. Kum. Nita Tucarama Salcar,
29 years old, sister of
later Shri Vijay Tucarama
Salcar, and

3. Kum. Kunda Tucarama Salcar,
29 years old, sister of
late Shri Vijay Tucarama
Salcar. ...Respondents.

Ms. Susan Linhares, advocate for the appellants.

CORAM : F. I. REBELLO, J.

DATE : 17th July, 2003.

ORAL JUDGMENT

As the matter arose from an order passed by the Motor Accident Claims Tribunal, record and proceedings of the trial Court were called for. The same are before the Court.

2. In the claim petition filed, the learned Claims Tribunal held that the original claimants have proved issue

no.1, namely: Was the accident to Vijay Tucarama Salcar, who succumbed to the head injuries sustained by him, on account of respondent no.1 driving the jeep in a rash and negligent manner?

Issue no.4 was an issue as to whether the respondents/appellants herein had proved that the death of the deceased who drove his scooter in a rash and negligent manner was held not to be proved.

Compensation was awarded in the sum of Rs.82,000/- with certain other directions as set out in the Order.

3. This is an appeal by the appellants challenging the findings recorded that the accident arose on account of the rash and negligent driving of the appellant no.1. the learned Claims Tribunal while answering the issue no.1 in favour of the original claimants, has relied on the evidence of C.W.2, Sharadchandra Salkar, who was the pillion rider on the scooter driven by the deceased. His evidence has been accepted. On behalf of the appellants herein, they examined the driver, appellant no.1. His evidence before the Court and his statement in the criminal prosecution filed against him in the Bicholim Court, was also considered. Before the Criminal Court appellant no.1 had deposed that the scooter on which the deceased was riding was trying to overtake another two-wheeler which was ahead of it and in the process of

overtaking the scooter, the scooterist brushed against the vehicle head-on and it is on account of this that the scooterist lost his balance and changed the direction of the scooter and in the process, dashed against the jeep. It has also come on record that the appellant no.1 had deposed that there were no vehicles inbetween their jeep and the scooter before the impact and that the deceased did not overtake any scooter or vehicle before giving a dash to the jeep. Considering this the Claims Tribunal rejected the evidence of this witness. The learned Claims Tribunal also found that the evidence of the said witnesses was not consistent with the evidence of R.W.2 Dr. Pradeep Dhaujekar.

4. In the Claim Petition, it had been contended on behalf of the appellants that the deceased was travelling on his scooter alongwith the pillion rider Sharadchandra Salkar, C.W.2, when the jeep being driven by appellant no.1, came in the opposite direction in a rash and negligent manner and at a fast speed and dashed against the scooter. On account of the accident, the scooter was dragged away by the jeep alongwith the deceased. The appellant did not even apply brakes, nor slowed down the speed and only stopped at a far distance from the point of impact. In the written statement filed on behalf of the respondents/appellants herein it was set out that appellant no.1 was driving his vehicle carefully and when he reached near the house of George Vaz at Assonora, Bardez, the deceased who was driving his scooter and

proceeding towards Mapusa side in a rash and negligent manner and at a high speed, all of a sudden came towards the said jeep. The jeep was proceeding on the left side of the road going to Bicholim. The appellant no.1 seeing the scooter coming towards him immediately applied the brakes and the vehicle remained stationery and the scooter driven by the deceased dashed against the vehicle. It was, therefore, pleaded that the rash and negligent driving was by the deceased. C.W.2 Sharadchandra Salkar, has deposed that he was the pillion rider on the scooter and on 21st September, 1993, a jeep belonging to the Health Department came in the opposite direction. A scooter was also coming in the opposite direction. The jeep of the Health Department overtook the scooter and came towards their side and gave a dash to the scooter. The front right side of the jeep, i.e. driver's side came in contact with the scooter. The jeep was at a very fast speed. After the impact, the scooter was pushed towards backside by about 2 metres and the jeep came forward by a distance of two metres and stopped. It is further stated that the witness became unconscious on account of the accident and sustained injuries. A suggestion was put to this witness that the jeep driver, appellant no.1, did not overtake the other scooter as deposed in his examination-in-chief. All that has come in cross-examination is in the nature of suggestions denying the version of the evidence as deposed to by C.W.2. A Panch witness Deelip N. Mhapsenkar, C.W.4, was examined in respect of the panchanama.

He has deposed that the jeep was facing towards Bicholim side and there was a scooter a little away from the jeep. The scooter was on the right side of the road as one proceeds from Mapusa to Bicholim and there were scratch marks of braking near the said scooter. In cross-examination he has stated that apart from the jeep, the scooter and the scratch marks, he did not see anything else in the place of the accident. He denied the suggestion that the scooter had not fallen on the right side as one proceeds from Mapusa to Bicholim. In the evidence it has come on record that the scooter was proceeding towards Mapusa side.

Appellant no.1 has examined himself. He has reiterated what is set out in the defence, namely that the scooter all of a sudden came towards the jeep and on seeing the jeep he applied his brakes and the jeep remained stationery. In cross-examination he has deposed that there was no vehicle inbetween his vehicle and the scooter, when he first saw the scooter and it was possible to see the road at least at a distance of 150 mts. from the place of the accident. He also deposed that the scooterist did not dash or brush any other vehicle, including two-wheeler before the actual impact. The witness has deposed that it was the deceased who was driving the vehicle in a rash and negligent manner. He was cross-examined on his evidence in the criminal proceedings at Bicholim. Therein he has stated that he saw the scooterist coming from the opposite direction

trying to overtake another two-wheeler, which was ahead of it and in the process of overtaking the scooter, the scooterist brushed against the scooter ahead of him, on account of which he lost his balance, changed the direction of the scooter and in the process the scooter dashed against the jeep. It is not necessary to go into the other aspect as this version is completely contrary to the defence pleadings in the written statement. In these circumstances, it is not possible to accept the evidence of this witness.

Another witness examined on behalf of the appellant was Dr. Pradeep Dhaujekar. In his examination-in-chief, he has set out that the scooterist came at a high speed towards their jeep when their driver applied brakes and remain stationery and the scooterist dashed against the jeep. In his cross-examination he has stated that there were no vehicles inbetween the jeep and the scooterist and that an object to a distance of 400 mts. could be seen from the place of the accident. He has further deposed that the deceased did not overtake any vehicle or scooterist before giving a dash on the jeep. He was confronted with his evidence before the Criminal Court, wherein he has deposed that he saw the scooterist trying to overtake another two-wheeler which was ahead and in that process brushed against the scooter ahead, lost his balance, changed direction and dashed against the jeep. In other words, this evidence also is clearly contrary to the defence as pleaded

by the appellants themselves. It is, therefore, not possible to accept the evidence of either R.W.1 or R.W.2.

The evidence of C.W.2, who was a pillion rider, in my opinion, has not been shaken. The Claims Tribunal has after considering the material, accepted that evidence. There is no reason for this Court to hold otherwise. Insofar as dependency is concerned, I do not find any error committed by the Claims Tribunal. Considering that the Claims Tribunal has recorded a finding that claimant no.1/respondent no.1 herein, who is the mother, would be entitled to compensation. The dependency is worked out at Rs.10,000/-. At the time of the accident she was 58 years old and the multiplier of 8 has been applied and, accordingly, compensation has been worked out alongwith some other amounts as set out therein.

4. There is no merit in this Appeal, which is accordingly rejected. Civil Application does not survive and hence is disposed of as such. R. & P. be sent back to the Motor Accident Claims Tribunal. Amount awarded to be deposited within four weeks from today.

F. I. REBELLO, J.

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